IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 495 of 1998
With
CRIMINAL APPEAL No. 556 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAT PARBHUDAS - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,
MR HD CHUDASAMA for Appellant(s) : 1,
MR AJ DESAI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 05/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Both these appeals are filed against the judgment and order dated 29.4.1998 passed by the learned Additional Sessions Judge, City Sessions Court, Ahmedabad in Sessions Case No. 84 of 1997 convicting accused No.1-Bharat Prabhudas Harijan (appellant in Criminal Appeal No. 495/95) for the offence punishable under Section 302 IPC for causing death of his wife Sarojben and also for the offence punishable under Section 498A IPC and sentencing him to suffer life imprisonment with fine of Rs.1,000/- (i/d RI for three months) for the first offence and also RI for one year and six months and fine of Rs.500/- (i/d RI for one month) for the second offence. Accused No.1 was directed to undergo both the sentences concurrently.

2. As far as Criminal Appeal No. 556 of 1998 is concerned, the same is filed by original accused Nos. 2 and 3 – Kalubhai Prabhudas Harijan and Kantibhai Prabhudas Harijan, both elder brothers of Bharat Prabhudas Harijan. The appellants in this appeal have been convicted for the offence punishable under Section 498A IPC and sentenced to suffer RI for one year and six months and fine of Rs.500/- (i/d. RI for one month).

3. The prosecution case was that nine years before the incident which took place on 10.12.1996,

deceased Sarojben was married to accused No.1 and and they had a son called “Amit” and a daughter called “Rekha”, aged 5 years and 3 years respectively on the date of the incident. The deceased was working as sweeper. On 17.11.1996, deceased – Sarojben had also filed a complaint against accused No.1 (Exh.35) before Vejalpur Police Station alleging that the accused No.1 had beaten up the deceased by giving fist blows on her mouth. Thereafter on 10.12.1996 when the deceased returned home, her son gave her water and she was playing with her daughter in the afternoon. However, accused No.1 entered the house and knocked her down on the floor and started beating her with a cricket bat and then brought a stove full of kerosene and poured kerosene on the deceased and lighted a match stick and set her on fire. When the deceased started shouting “help,help”, accused No.1 also started shouting that the deceased was burnt and accused No.1 threw a mattress on the person of the deceased to extinguish the fire. Thereafter, the brother and sister-in-law of the deceased rushed to the place of incident and removed the deceased as well as accused No.1 to Vadilal Sarabhai Hospital where they both were admitted to the burns ward. Accused No.1 and his two brothers were charged for the offence punishable under Section 302 read with Section 114 IPC and they were also charged for the offence punishable under Section 498A IPC for inflicting cruelty on the deceased with a view to

making her to commit suicide.

4. The incident took place on 10.12.1996. However, the deceased expired on 16.12.1996. Hence, the offence under Section 302 read with Section 114 IPC was also registered against the accused. The accused pleaded not guilty and at the trial, the prosecution led evidence of PW 8 Dr Josheswa Cheroppel (Exh. 48 page 109), PW 3 Ranjitsinh Virsangbhai Gohil (Exh.23 page 57), Executive Magistrate who recorded the dying declaration at Exh.26 (page 290), PW 4 Labhubhai Dhirabhai, brother of the deceased at Exh.27, Investigating Officer PW 7 Ramabhai Amtabhai Patel (Exh.41 page 93) and the panch witness PW 1 Dilipbhai M Desai, Assistant Professor, Forensic Medicines Department, V.S. Hospital at Exh.16 (page 47) who performed the postmortem on the dead body of the deceased. After considering the oral and documentary evidence on record and the arguments of the learned advocate for the appellants, the learned City Sessions Judge rendered the aforesaid judgment convicting accused No.1, husband of the deceased, for the offence punishable under Section 302 IPC and also for the offence punishable under Section 498A IPC. As far as accused Nos. 2 and 3 are concerned, the learned Sessions Judge convicted them only for the offence punishable under Section 498A and the imposed the sentence as indicated hereinabove.

It is against the aforesaid judgment that all the three accused have preferred the present appeals.

5. We have heard learned counsel for the appellant Mr Chudasama and Mr AJ Desai, learned APP.

6. Since the learned counsel for the appellant is not present, we also requested Mr Desai to assist us on the merits of both the appeals.

7. It appears from the case advanced on behalf of the accused before the trial Court that the defence of accused No.1 was that he had not set the deceased on fire and that on the contrary he had tried to save the deceased by throwing a mattress on her body and that in that process accused No.1 himself sustained burn injuries for which he was also shifted to the V.S. Hospital alongwith the deceased and the medical case papers of the V.S. Hospital also indicate that accused No.1 had sustained burn injuries while he was trying to save his wife and that, therefore, the medical case papers at Exh. 21 also had given the history of sustaining burn injuries while saving wife. It was also contended that the prosecution had not examined Amit, son of the deceased and accused No. 1 although he was present at the time of the incident as mentioned in

the dying declaration and the FIR itself. It is also contended that the neighbours who rushed to the place of incident were not examined nor did the prosecution examined the Police Officer who had sent the yadi Exh. 25 to the Executive Magistrate for recording the dying declaration of the deceased.

8. As far as accused Nos. 2 and 3 are concerned, it was contended before the trial Court on behalf of the said accused that accused Nos. 2 and 3 were admittedly staying separate from accused NO.1 and his family consisted of accused No. 1, his wife (the deceased) and their two children. It was submitted that accused Nos. 2 and 3 were falsely involved on account of the disputes which the brother of the deceased had ever since the date of the marriage of accused No.1 with the deceased. It was also submitted that apart from the answer to the last question in the dying declaration, there is no other evidence, either oral or documentary, implicating accused Nos.2 and 3 even for the offence punishable under Section 498A IPC.

9. Having heard the learned APP and after carefully gone through the oral and documentary evidence on record, we are not inclined to interfere with the conviction of accused No. 1 – Bharat Prabhudas Harijan for the offence punishable under Section 302 IPC and the conviction for the offence

punishable under Section 498A IPC. The complaint dated 17.11.1996 at Exh. 35 lodged by the deceased – wife herself at the Vejalpur Police Station indicates that on a very minor incident of the deceased trying to cajole their son Amit, aged 5 years into taking tea, accused No.1 got annoyed with the deceased and gave fist blows on the face of the deceased which resulted into bleeding and compelling the deceased to lodge the complaint on 17.11.1996 at 10.45 AM. The said FIR at Exh. 35 is duly proved. Thereafter, within just about 3 weeks, on 10.12.1996 when the deceased returned home after doing her job as sweeper in the afternoon, the children of the deceased and accused No. 1 were present and accused No.1 came home and started beating the deceased with a cricket bat and poured kerosene on her and lighted a match stick which resulted into 76% burn injuries on the body of the deceased. The incident took place at about 3 O' clock in the afternoon and the deceased was admitted to the hospital at about 4.05 PM. PW 8 Dr Josheswa Cheroppel (Exh. 48 page 109) examined the patient and certified that the patient was conscious. Thereafter the police yadi (Exh. 25) was sent to the Executive Magistrate requesting him to record the dying declaration of the patient and at that time also the said doctor made an endorsement at about 5.10 PM that the “patient is conscious”. In response to the said yadi, Executive Magistrate Mr Ranjitsinh V Gohil reached the V.S. Hospital at about 6.50 PM and

inquired with the doctor and the doctor confirmed that the patient was conscious. The Executive Magistrate asked all the persons present in the room to leave the room and put questions to the patient to verify whether the patient was conscious. The Executive Magistrate informed the patient that he had gone there to record the statement and started recording the declaration at 6.55 PM. The declaration was recorded in the question-answer form and the recording was completed at 7.30 PM. When recording of the declaration was completed, the Executive Magistrate again requested the Medical Officer to certify and the same Medical Officer made an endorsement below the dying declaration at Exh. 26 at 7.50 PM that the patient was conscious. In view of this evidence being dying declaration at Exh. 26 with the endorsement of the doctor that the patient was conscious and also the oral evidence of said Executive Magistrate Mr Ranjitsinh V. Gohil who has also been examined in the cross examination and also the evidence of the brother of the deceased that when he was removing the deceased to the V.S. Hosptial she had stated that accused No. 1 had beaten her up and thereafter set her on fire and lighted a match stick. We have no hesitation in coming to the conclusion that accused No.1 did cause the burn injuries on the body of of his wife Sarojben which resulted into a death and that accused No.1 had caused those injuries with the knowledge that such serious burn injuries in

the ordinary course of nature would result into death of his wife.

10. It is true that accused No. 1 was also taken to the hospital in the same afternoon and the medical case papers at Exh. 21 indicated that accused No.1 sustained burn injuries while saving wife, much was made in the case papers and also the fact that the deceased herself mentioned in the dying declaration that her husband (accused No.1) threw a mattress on the deceased. However, merely because accused No.1 after having poured kerosene on the deceased and having lighted a match stick and threw it on the kerosene on body of his wife, realized after setting her aflame that he had done a horrendous act and that he had to do something to save his wife as well as himself. If accused No. 1 threw a mattress on the body of the deceased, it cannot be said that when accused No. 1 had poured kerosene on his wife and threw the lighted match stick on her kerosene body, there could not be any ambiguity of the knowledge that the act would have in the ordinary course of nature caused death of the deceased. Even the medical case papers indicate that the burn injuries sustained by accused No. 1 were only 8% and that too they were superficial burn injuries on the right hand and leg of accused No.1. This would only mean that after being set on fire the deceased wife who was already knocked down by accused No. 1 must have tried

to catch hold of the right hand and leg of accused No. 1 and it was in that process that accused No.1 suffered superficial burn injuries. If accused No.1 had made an all out attempt to save the deceased who was already in flames, accused No. 1 would have sustained injuries on his chest and in his arms. We are, therefore, not inclined to accept the argument urged in despair on behalf of accused No.1 that accused No.1 could not be said to be guilty of having any intention or knowledge of causing such serious burn injuries to his wife that would have resulted into death.

11. In view of the above discussion, we confirm the conviction of accused No. 1 for the offence punishable under Section 302 IPC.

12. As regards the conviction of all the three accused for the offence punishable under Section 498A IPC is concerned, while conviction of accused No. 1 for the offence punishable under Section 498A is fully justified in view of the fact that in the very recent past before the incident on 17.11.1996 accused No. 1 had inflicted fist blows on the deceased to such an extent that she was compelled to lodge a complaint with the Police Station on 17.11.1996, the conduct of the accused on the date of the incident also i.e. on 10.12.1996 also corroborate the prosecution case that the deceased has given out not

only in the oral evidence of the brother of the deceased but also in the dying declaration and the FIR that accused No. 1 had inflicted cruelty on the deceased.

13. However, as far as the charge of cruelty against accused Nos. 2 and 3 is concerned, the prosecution is not on the firm ground. Even as per the prosecution case, accused Nos. 2 and 3, elder brothers of accused, were residing separately. In the complaint lodged by the deceased on 17.11.1996, the only allegation of cruelty is against accused No. 1 and no whatsoever against accused Nos. 2 and 3. Even in the oral evidence of the brother of the deceased PW 4 Labhubhai at Exh. 27 on the way to the hospital, the deceased had only disclosed to her brother merely the conduct of accused No. 1 only and no allegation was made against accused Nos. 2 and 3. Even if one were to accept the deposition adduced by Labhubhai, the involvement of accused Nos. 2 and 3 is not indicated in any manner whatsoever. During the course of examination-in-chief, Labhubhai has identified accused No. 1 as the husband of deceased Sarojben and accused Nos. 2 and 3 as brothers-in-law of deceased. The dying declaration makes it very clear that accused No. 1 was the husband of the deceased and accused Nos. 2 and 3 were brothers-in-law of the deceased and both accused Nos. 2 and 3 used to encourage accused No. 1 for inflicting mental and physical torture on deceased Sarojben. In her

complaint produced at Exh. 43, she has reiterated that accused Nos. 2 and 3 used to encourage accused No. 1, who was her husband, to inflict mental and physical torture on her. Save and except the aforesaid version, the involvement of accused Nos. 2 and 3 in the commission of offence has not been established by the prosecution in cogent, convincing and conclusive manner.

14. In the light of the foregoing discussion, Criminal Appeal No. 495 of 1998 filed by accused No. 1 i.e. Bharat Prabhudas Harijan is hereby dismissed and judgment and order dated 29.4.1998 rendered by the learned Additional Sessions Judge, Court No. 13, Ahmedabad City in Sessions Case No. 84 of 1997 *qua* this appellant is hereby confirmed.

Criminal Appeal No. 556 of 1998 filed by accused Nos. 2 and 3 i.e. Kalubhai Prabhubhai Harijan and Kantibhai Prabhudas Harijan is allowed and the judgment and order dated 29.4.1998 rendered by the learned Additional Sessions Judge, Court No. 13, Ahmedabad City in Sessions Case No. 84 of 1997 *qua* these appellants is hereby set aside. Accused Nos. 2 and 3 are acquitted of the offence punishable under Section 498A IPC and as a result, accused Nos. 2 and 3 shall be released forthwith, if their presence is not required in any other case. Their bail-bonds shall stand discharged. *Muddamal* be disposed of in terms of the order passed by the learned Trial Judge in the impugned judgment.

[M.S. SHAH, J.]

[H.B. ANTANI, J.]

sundar/-